
REMARKS

This responds to the Office Action mailed on March 29, 2006.

Claims 11, 15, 20, 26, 29 and 37 are amended, no claims are canceled; no claims are added; as a result, claims 11-40 are now pending in this application.

The amendments made herein have been to clarify the claims and to correct a typographical error (claim 26), and are not intended to limit the scope of equivalents to which any claim element may be entitled. The amendments to the claims and new claims have support throughout the specification, including, for example, on page 2, line 29, page 7, line 32 and page 15, lines 14-16 and line 24. See also FIGS. 1-11 which provide examples of different types and shapes of "holes." No new matter has been added as a result. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Interview Summary

Examiner Tawfik and Applicant's Representative, Barbara J. Clark, held a telephonic interview on June 27, 2006. Proposed new claim language was discussed. Examiner Tawfik indicated that adding the phrase "a hole" to further describe the "pull-tab opening" and further clarifying that a "pulling force" is being used (i.e., the pull-tab opener is being pulled on), appears to overcome the outstanding rejection under 35 USC 103 over the cited references. However, since the Office Action mailed on March 29, 2006 was a Final Rejection, Examiner Tawfik recommended that an RCE be filed if any amendments were made to the claims. Ms. Clark noted that the language being proposed did not appear to alter the scope of the claims since the term "pull-tab opening" would have been interpreted in light of the specification, including the drawings, to be a "hole." (Similarly, the clarification of "pulling force" would likely have been understood without being explicitly recited. However, in an effort to facilitate prosecution, an RCE is being filed together with this Amendment and Response). Examiner Tawfik further

indicated that additional searching and reconsideration would be required. Ms. Clark thanks Examiner Tawfik for the courtesies extended during the interview.

§103 Rejection of the Claims

Claims 11-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Focke et al. (US 5,040,685) in view of Chalin et al. (US 3,873,735).

The Office Action states that Focke discloses various elements of the claims including a pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is designed to be hooked with hooking means but that Focke does not disclose the step of providing suitable markings to convey instructions to use the pull-tab opener to access the package contents without utilizing a pinch force, wherein the package is adapted to be opened easily by a person who follows the instructions conveyed by the markings. The Office Action states that Chalin discloses a similar method for providing an opening system for a container comprising the step of providing suitable markings via words to convey instructions to use the pull-tab opener to access the package contents without utilizing a pinch force, wherein the package is adapted to be opened easily by a person who follows the instructions conveyed by the markings and that it would have been obvious to modify Focke's method by having the step of providing suitable markings to convey instructions to use the pull tab opener to access package contents as suggested by Chalin, in order to make it easy and simple opening and handling such containers.

Applicant respectfully submits that the Office Action has not established the *prima facie* obviousness of the present claims. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on

applicant's disclosure. MPEP 2142 (citing In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Furthermore, claims 12-14, 16-35 and 37-40 are dependent claims. The additional limitations provided in dependent claims cannot by themselves be rendered obvious over the cited references if the independent claim from which it depends is determined to be nonobvious.

Focke discusses a package which can be initially opened by *grasping or pinching* a closing flap 23 and lifting it as a part of the folding flap 18 into an upright position (FIG. 3) or back against the rear wall (col. 3, lines 15-18) to expose an extraction opening 30 which is not enclosed on all sides. When the pack is opened via the adhesive tape 35, the foil piece 41 is severed out of the folding flap 17 when the folding flap 18 is lifted, thus forming a recess 39 (col. 4, lines 20-24) in a sidewall. The recess 39 provides an additional access point which “serves to improve or enlarge the extraction opening [30]” (col. 3, lines 67-68).

In contrast, claim 11, as amended, recites a method of providing an enhanced opening system for a sealed container comprising providing a bag having lines of weakness and a pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole designed to be hooked with hooking means; and providing suitable markings to convey instructions to pull on the pull-tab opener to access contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with the pull-tab opener by a person who follows the instructions conveyed by the markings. Also in contrast, claim 15, as amended, recites a method of providing an enhanced product removal system for a sealed container comprising: providing a sealed container having lines of weakness; providing at least one product disposed within the sealed container; and providing a pull-tab opener secured to the sealed container proximate to the lines of weakness wherein the pull-tab opener has a pull-tab opening configured as a hole to allow a user to hook the pull-tab opener through the pull-tab opening and apply sufficient pulling force without utilizing a pinch force, to tear the sealed container at the lines of weakness creating an opening, further wherein the product is oriented proximate to the opening

to facilitate easy removal of the product. Further in contrast, claim 36, as amended, recites a method of providing an enhanced opening system for a sealed container comprising providing a bag having lines of weakness and a pull-tab opener for opening the sealed container, the pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole designed to be hooked with hooking means and pulled open.

Those skilled in the art understand that a pinching or grasping force, as required in Focke, necessarily requires the use of the thumb and one or more fingers to grasp something therebetween. Such a force is not required in Applicant's invention as recited in the claims and explained in the specification. Since the *pull*-tab opening (in the *pull*-tab opener) is a hole designed to be hooked with hooking means, the force being used is necessarily a pulling force, not a pinch force as in Focke.

Chalin does not overcome the deficiencies of the primary reference. Chalin discusses a food package for heating and venting food contents contained within. The package has a lift tab 828 which serves as a means of grasping or pinching. The lift tab is a part of the package and is not separately secured to the bag. The lift tab has *no opening*.

Clearly, the product in the primary reference and each of the products in the secondary references are fundamentally different from each other and such critical differences must be recognized. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990).

Additionally, there is simply no suggestion in Focke *as to the desirability* of conveying instructions to use the pull-tab opener to access the package contents without utilizing a pinch force as suggested in the Office Action. Additionally, the lift tab of Chalin requires use of a pinch force, so does not teach or suggest such instructions: "Lift tab 828 serves as a means of *grasping* the appropriate part of cover 804 when a vent is to be formed as shown in FIG. 27. (col. 17, lines 8-10) (emphasis added). Assuming that the instructions of Chalin were as described in the Office Action, i.e., "to use the pull-tab opener to access the package contents without

utilizing a pinch force,” such instructions would make the package of Focke inoperable because it is only *with* the use of a pinch force that the package of Focke can be opened. Therefore, there is no reasonable expectation of success even if the references were combined.

Regarding claim 28, the Examiner states on page 3 of the Office Action that “Focke discloses that the hooking means comprises one to three fingers or [an] object, the object having a maximum diameter not greater than about eight cm, (Figs. 1 and 3, via the 39 and 41).” Applicant respectfully traverses this statement and further clarifies that Focke relies on “grasping means” to open the package, not “hooking means.” For example, “When opening the pack, the adhesive strip 35 is *grasped* at the “*grip* end 38.” (col. 3, lines 58-59) (emphasis added). Foil piece 41, referred to by the Office Action, is tightly connected to the bottom face of the closing flap 23. (col. 4, lines 13-15). There is no teaching or suggestion that the foil piece 41 can be hooked. The recess 39, also referred to by the Office Action, again is present to “improve or enlarge the extraction opening [30]” (col. 3, lines 67-68). Again, there is no teaching or suggestion that the recess is designed to be hooked by any means. The recess 39 does, however, facilitate, “the *grasping* of a tissue for extraction.” (col. 4, lines 5-6) (emphasis added). Additionally, the only reference to “fingers” Applicant can find in Focke is with respect to the number of fingers it takes to grasp the contents, i.e., “the foremost tissue can be comfortably *grasped* with two fingers (col. 2, lines 67-68) (emphasis added).

An additional requirement of the *prima facie* case is that the *references must teach or suggest all the claim limitations*. As noted above, the references fail to teach or suggest various elements of the claims, including, but not limited to, providing a pull-tab opener having a pull-tab opening *integral therewith*, wherein the pull-tab opening is a hole designed to be hooked with hooking means; and providing suitable markings to convey instructions to *pull on* the pull-tab opener to access contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with the pull-tab opener.

Since all of the elements of the claims are not found in the references, Applicant assumes the Examiner is taking official notice of the missing elements from an undisclosed source.

Applicant respectfully objects to the taking of official notice, and pursuant to MPEP 2144.03, Applicant traverses the assertion of official notice and requests that the Examiner cite a reference that teaches the missing element. If the Examiner cannot cite a reference that teaches the missing element, Applicant respectfully requests that the Examiner provide an affidavit that describes how the missing element is present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of the claims.

There is further absolutely no indication in either of the references of any appreciation of the problem being solved by Applicant's invention. By providing the enhanced opening system recited herein, a user can now, for the first time use a pull-tab opener having a pull-tab opening (which is a hole) integral therewith and which is designed to be hooked with hooking means to open a sealed container with a pulling force *without utilizing a pinch force*. This is not possible with the opening systems in either of the references cited. Again, a pinch force necessarily *requires* one to grasp with a thumb and one or more fingers. As noted in the specification, it is widely recognized that such grasping or pinching is quite difficult for consumers who have limited or reduced hand strength and dexterity due to age, physical illness or fatigue. (See specification, page 1, lines 19-21).

When a person, having the references before him and not cognizant of Applicant's disclosure, would not be informed that a problem (solved by Applicant's claimed invention) ever existed, such references (which never recognized the problem) *could not have suggested its solution*. Combining references in this manner is improper. In re Shaffer, 229 F.2d 476, 108 USPQ 326, 329 (CCPA 1956). Focusing on the obviousness of substitutions and differences instead of on the invention as a whole is a legally improper way to simplify the difficult determination of obviousness. Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 USPQ 81, 93 (Fed. Cir.1986).

Applicant respectfully submits that claims 11-40 are patentably distinct from the cited references, either alone or in combination. Claims 11-40, each viewed as a whole, are not

suggested by the cited references and not obvious under 35 USC 103(a).

Reconsideration and withdrawal of this rejection is respectfully requested.

Comments Regarding Response to Arguments

Applicant respectfully submits that the references are not combinable for all the reasons stated throughout prosecution. Although Applicant believes the two very diverse product types discussed in each reference are highly relevant in determining whether or not the references should be combined, and does not admit that the references would be properly combinable if this were the only difference, Applicant's comments regarding the inappropriateness of making the combination were directed to the two different types of package opening systems discussed in each reference, as characterized by the Examiner. When characterized in this manner, such differences are so extreme as to provide no reasonable expectation of success when combined. Therefore, assuming that the instructions of Chalin were as described on page 3 of the Office Action mailed on November 4, 2005 and on page 2 of the Office Action mailed on March 29, 2006, i.e., "to use the pull-tab opener to access the package contents *without utilizing a pinch force*," (emphasis added) such instructions would make the package of Focke inoperable because it is only *with* the use of a pinch force that the package of Focke can be opened.

Applicant does note that the Examiner now states on page 5 of the Office Action, "that Chalin only teaches the use of markings and prints to convey instructions of opening a package, regardless to the use of pinch force or not. . ." However, Applicant respectfully submits that this statement is inconsistent with the language used elsewhere in this Office Action, which is noted above.

The Examiner goes on to state on page 5 of the Office Action, ". . . the main reference of Focke does not use a pinch force. . ." and also states on page 6 that "Focke discloses the pull tab opening without the use of pinch force as only using pull tape 38." Applicant respectfully traverses these assertions, and notes that Focke does indeed require a pinch, i.e., grasping force to be used. Applicant respectfully asserts that there is no other way for the package in Focke to

be opened. Again, such a term refers to pinching, grasping or gripping something between the thumb and one or more fingers. In Focke, this “something” is appropriately named the “*grip* end 38.” Such a force can be referred to as a pinching or grasping force (see specification at page 3, line 12) or even a gripping force (see specification at page 15, line 14)..

The Examiner states, on page 6 of the Office Action that the package of Focke is “capable of being hooked.” Again, foil piece 41, referred to by the Office Action, is tightly connected to the bottom face of the closing flap 23. (col. 4, lines 13-15). Applicant again respectfully asserts that there is no teaching or suggestion that the foil piece 41 can be hooked. Indeed, it is not clear how a solid piece of foil could be “hooked” in any manner. The recess 39, also referred to by the Office Action, again is present to “improve or enlarge the extraction opening [30]” (col. 3, lines 67-68). Again, there is no teaching or suggestion that the recess is designed to be hooked by any means. Even if the recess 39 could be “hooked,” it is not clear what this would accomplish. It certainly would not be pertinent to a method of providing an enhanced opening system for a sealed container as recited in claim 11. The recess 39 does, however, facilitate, “the *grasping* of a tissue for extraction.” (col. 4, lines 5-6) (emphasis added).

Again, the methods of the present invention only require the pull-tab opening to be pulled on, i.e., only requires a pulling force. As stated in the specification at page 21, lines 6-7, “This design allows a person to utilize a larger muscle group as compared to the muscles needed to produce a pinch force. As a result, the pull-tab of the present invention provides ease of opening to those with reduced hand strength, whether through disability, age or illness.”

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 515-233-3865 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,


ANNE L. MILLER

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
515-233-3865

Date JUNE 29, 2006

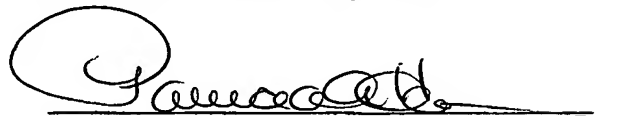
By


Barbara J. Clark
Reg. No. 38,107

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 29TH day of June, 2006.

PATRICIA A. HULTMAN

Name



Signature